

# ***Statement of Basis***

for the DRAFT CAAPP Permit for:

**Source Name:**

**Vector Pipeline L.P.**

Statement of Basis No.: 197035AAL-514

I.D. No.: 197035AAL

Permit No.: 06060026

Date Prepared: April 10, 2014

Permitting Authority:

Illinois Environmental Protection Agency  
Bureau of Air, Permit Section  
217/785-1705

This Statement of Basis is being provided to USEPA and any interested parties as required by Section 39.5(8)(b) of the Illinois Environmental Protection Act.

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## **PREFACE**

### **Reason For This Document**

This document is a requirement of the permitting authority in accordance with 502(a) of the Clean Air Act, 40 CFR 70.7(a)(5), and Section 39.5(8)(b) of the Illinois Environmental Protection Act. Section 39.5(8)(b) of the Illinois Environmental Protection Act states the following:

"The Agency shall prepare a ..... statement that sets forth the legal and factual basis for the Draft CAAPP permit conditions, including references to the applicable statutory or regulatory provisions."

### **Purpose Of This Document**

The purpose of this Statement of Basis is to provide discussion regarding the development of this Draft CAAPP Permit. This document would also provide the permitting authority, the public, the source, and the USEPA with the applicability and technical matters that form the basis of the Draft CAAPP Permit.

### **Summary Of Historical Actions Leading Up To Today's Permitting Action**

The source had not had any previously issued CAAPP Permit.

### **Limitations**

This Statement of Basis is not enforceable and only sets forth the legal and factual basis for the Draft CAAPP Permit Conditions (Chapters I and II). Chapter III contains supplemental material that would assist in educating interested parties about this source and the Draft CAAPP Permit. The Statement of Basis does not shield the source from enforcement actions or its responsibility to comply with existing or future applicable regulations. Nor does the Statement of Basis constitute a defense to a violation of the Federal Clean Air Act or the Illinois Environmental Protection Act including implementing regulations.

This document does not purport to establish policy or guidance.

## **INTRODUCTION**

The Clean Air Act Permit Program (CAAPP) is the operating permit program established in Illinois for major stationary sources as required by Title V of the federal Clean Air Act and Section 39.5 of the Illinois Environmental Protection Act. The Title V Permit Program (CAAPP) is the primary mechanism to apply the various air pollution control requirements established by the Clean Air Act to major sources, defined in accordance with Title V of the Clean Air Act. The Draft CAAPP Permit contains conditions identifying the state and federal applicable requirements that apply to the source. The Draft CAAPP Permit also establishes the necessary monitoring and compliance demonstrations. The source must implement this monitoring to demonstrate that the source is operating in accordance with the applicable requirements of the permit. The Draft CAAPP Permit identifies all applicable requirements for the various emission units as well as establishes detailed provisions for testing, monitoring, recordkeeping, and reporting to demonstrate compliance with the Clean Air Act. Further explanations of the specific provisions of the Draft CAAPP Permit are contained in the following Chapters of this Statement of Basis.

In addition, the Illinois EPA has committed substantial resources and effort in the development of an acceptable Statement of Basis (this document) that would meet the expectations of USEPA, Region 5. As a result, this document contains discussions that address applicability determinations, periodic monitoring, streamlining, prompt reporting, and SSM authorizations (as necessary). These discussions involve, where necessary, a brief description and justification for the resulting conditions and terms in this Draft CAAPP Permit. This document begins by discussing the legal basis for the contents of the Draft CAAPP Permit, moves into the factual description of the permit, and ends with supplemental information that has been provided to further assist with the understanding of the background and genesis of the permit content.

It is Illinois EPA's preliminary determination that this source's Permit Application meets the standards for issuance of a "Final" CAAPP Permit as stipulated in Section 39.5(10)(a) of the Illinois Environmental Protection Act (see Chapter I - Section 1.2 of this document). The Illinois EPA is therefore initiating the necessary procedural requirements to issue a Final CAAPP Permit. The Illinois EPA has posted the Draft CAAPP permit and this Statement of Basis on USEPA website:

<http://www.epa.gov/reg5oair/permits/ilonline.html>

## **CHAPTER I – LEGAL BASIS FOR THE PERMIT AND PERMIT CONDITIONS**

### **1.1 Legal Basis for Program**

The Illinois EPA's state operating permit program for major sources established to meet the requirements of 40 CFR Part 70 are found at Section 39.5 of the Illinois Environmental Protection Act [415 ILCS 5/39.5]. The program is called the Clean Air Act Permitting Program (CAAPP). The underlying statutory authority is found in the Illinois Environmental Protection Act at 415 ILCS 5/39.5. The CAAPP was given final full approval by USEPA on December 4, 2001 (see 66 FR 62946).

### **1.2 Legal Basis for Issuance of CAAPP Permit**

In accordance with Section 39.5(10)(a) of the Illinois Environmental Protection Act, the Illinois EPA may only issue a CAAPP Permit if all of the following standards for issuance have been met:

- The applicant has submitted a complete and certified application for a permit, permit modification, or permit renewal consistent with Sections 39.5(5) and (14) of the Illinois Environmental Protection Act, as applicable, and applicable regulations (Section a. below);
- The applicant has submitted with its complete application an approvable compliance plan, including a schedule for achieving compliance, consistent with Section 39.5(5) of the Illinois Environmental Protection Act and applicable regulations (Section b. below);
- The applicant has timely paid the fees required pursuant to Section 39.5(18) of the Illinois Environmental Protection Act and applicable regulations (Section c. below); and
- The applicant has provided any additional information as requested by the Illinois EPA (Section d. below).

#### **a. Application Status**

The source submitted an application for a CAAPP Permit on June 6, 2006. The source is currently operating under Construction Permit #06060025. This Draft CAAPP Permit addresses application content and necessary revisions to meet the requirements for issuance of the permit.

#### **b. Present Compliance Status**

At the time of this Draft CAAPP Permit, there were no pending State or Federal enforcement actions against the source; therefore, a Compliance Schedule is not required for this source. The source submitted an approvable Compliance Plan as part of its Certified Permit Application. The source has certified compliance with all applicable rules and regulations. In addition, the draft permit requires the source to certify its compliance status on an annual basis.

#### **c. Payment of Fees**

The source is current on payment of all fees associated with operation of the emission units.

**d. Additional Information**

The source was not required to submit any additional application material.

**1.3 Legal Basis for Conditions in the CAAPP Permit**

This industrial source is subject to a variety of Federal and SIP regulations, which are the legal basis for the conditions in this permit (see Sections a. and b. below). Also, the CAAPP provides the legal basis for additional requirements such as periodic monitoring, reporting, and recordkeeping. The following list summarizes those regulations that form the legal basis for the conditions in this Draft CAAPP Permit and are provided in the permit itself as the origin and authority.

**a. Applicable Federal Regulations**

This source operates emission units that are subject to the following Federal regulation.

40 CFR Part 60 - Subpart A, NSPS General Provisions  
40 CFR Part 60 - Subpart KKKK

**b. Applicable SIP Regulations**

This source operates emission units that are subject to the following SIP regulation:

35 IAC Part 201 - Permits And General Provisions  
35 IAC Part 212 - Visible And Particulate Matter Emissions  
35 IAC Part 214 - Sulfur Limitations  
35 IAC Part 218 - Organic Material Emission Standards And Limitations  
35 IAC Part 216 - Carbon Monoxide Emissions  
35 IAC Part 217 - Nitrogen Oxides Emissions  
35 IAC Part 228 - Asbestos  
35 IAC Part 244 - Episodes  
35 IAC Part 254 - Annual Emissions Report

**c. Other Applicable Requirements**

There are no other applicable requirements for this source.

## **CHAPTER II - FACTUAL BASIS FOR THE PERMIT AND PERMIT CONDITIONS**

### **2.1 Source History**

There is nothing special history for this source.

### **2.2 Description of Source**

SIC Code: 4922

County: Will

Vector Pipeline L.P. applied for a CAAPP permit on June 9, 2006. The facility consists of one solar turbine natural gas fired with a maximum heat rate of 120 mmBtu/hr and one natural gas fired standby electrical generator with heat rate of 440 KW. The Construction Permit #06060025 was issued on September 20, 2006. This facility is not major for HAPs.

The source contains the following processes:

<i>Emission Units</i>	<i>Description</i>
Natural Gas Fired Turbine	120 mmBtu/hr

### **2.3 Single Source Status**

This source does not have any collocated facilities that would be considered a single source with this facility based on information found in the certified application.

### **2.4 Ambient Air Quality Status for the Area**

The source is located in an area that is currently designated nonattainment for the National Ambient Air Quality Standards for Ozone and attainment or unclassifiable for all other criteria pollutants (carbon monoxide, lead, nitrogen dioxide, PM<sub>2.5</sub>, PM<sub>10</sub>, sulfur dioxide). (See 40 CFR Part 81 - Designation of Areas for Air Quality Planning Purposes)

### **2.5 Source Status**

The source requires a CAAPP permit because this source is considered major (based on its PTE) for the following regulated pollutants: carbon monoxide (CO).

This source is considered a natural minor for the following regulated pollutants: PM<sub>10</sub>, PM<sub>2.5</sub>, nitrogen oxides (NO<sub>x</sub>), volatile organic material (VOM), sulfur dioxide (SO<sub>2</sub>) and/or hazardous air pollutant (HAP).

This source is subject to an "applicable requirement," as defined by Section 39.5(1) of the Act, for emissions of greenhouse gases (GHG) as defined by 40 CFR 86.1818-12(a), as referenced by 40 CFR 52.21(b)(49)(i). There are no GHG-related requirements under the Illinois Environmental Protection Act, Illinois' State Implementation Plan, or the Clean Air Act that apply to this facility.

### **Gas Turbine Emission Calculations**

Heat input: 120 mmBtu/hr

Emission Factor for NO<sub>x</sub>: 0.073535 lb/mmBtu

Emission Factor for CO: 0.078342 lb/mmBtu



Hours of Operation: 7964 hr/yr

NO<sub>x</sub> Emissions = (0.073535 lb/mmBtu)(120 mmBtu/hr) = **8.82 lbs/hr**

(8.82 lb/hr)(7964 hr/yr)(1 ton/2000 lb) = **35.12 tons/yr**

CO Emissions = (0.078342 lb/mmBtu)(120 mmBtu/hr) = **9.40 lbs/hr**

(9.40 lb/hr)(7964 hr/yr)(1 ton/2000 lb) = **37.42 tons/yr**

Based on AP-42, Fifth Edition, Section 3.1 (Stationary Gas Turbines):

PM Emission Factor: 1.70E-02 lb/mmBtu

VOM Emission Factor: 2.10E-03 lb/mmBtu

SO<sub>2</sub> Emission Factor : 6.02E-02, Max. Sulfur Content by Weight 0.064

**PM = 2.04 lbs/hr and 8.94 tons/yr**

**VOM = 0.25 lbs/hr and 1.10 tons/yr**

**SO<sub>2</sub> = 7.22 lb/hr and 31.62 tons/yr**

**HAP (total HAP's) = 1.12 lbs/hr and 4.9 tons/yr** using different emission factor for each HAP from MACT Docket Table 2.

## 2.6 Annual Emissions

The following table lists annual emissions (tons) of criteria pollutants for this source, as reported in the Annual Emission Reports (AER) sent to the Illinois EPA:

<i>Pollutant</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>
CO	17.0	44.0	17.0
NO <sub>x</sub>	16.8	16.8	16.8
PM	8.1	8.9	8.9
SO <sub>2</sub>	0.5	0.4	0.4
VOM	0.1	0.1	0.1
CO <sub>2E</sub>	57,802.0	56,030.0	56,030.0
HAP	4.93	4.9	4.93

## 2.7 Fee Schedule

The following table lists the approved annual fee schedule (tons) submitted in the Source's permit application:

<i>Pollutant</i>	<i>Tons/Year</i>
Volatile Organic Material (VOM)	1.10
Sulfur Dioxide (SO <sub>2</sub> )	31.62
Particulate Matter (PM)	8.94
Nitrogen Oxides (NO <sub>x</sub> )	43.12
HAP, not included in VOM or (HAP)	4.90
Total	84.78

An annual fee schedule (tons) is not set for this source for the purpose of permit fees as the source is paying the maximum fee at the time of issuance of the permit.

## 2.8 SIP Permit Facts (T1 Limits)

CAAPP Permits must address all "applicable requirements," which includes the terms and conditions of preconstruction permits issued under regulations approved by USEPA in accordance with Title I of the CAA (See definition of applicable requirements in Section 39.5(1) of the Illinois Environmental Protection Act). Preconstruction permits, commonly referred to in Illinois as Construction Permits, derive from the New Source Review ("NSR") permit programs required by Title I of the CAA. These programs include the two major NSR permit programs: (1) the Prevention of Significant Deterioration ("PSD") program<sup>1</sup> and (2) the nonattainment NSR program.<sup>2</sup> These programs also encompass state construction permit programs for projects that are not major.

In the CAAPP or Illinois's Title V permit program, the Illinois EPA's practice is to identify requirements that are carried over from an earlier Title I permit into a New or Renewed CAAPP Permit as "TI" conditions (i.e., Title I conditions). Title I Conditions that are revised as part of their incorporation into a CAAPP Permit are further designated as "TIR". Title I Conditions that are newly established through a CAAPP Permit are designated as "TIN". It is important that Title I Conditions be identified in a CAAPP Permit because these conditions will not expire when the CAAPP Permit expires. Because the underlying authority for Title I Conditions comes from Title I of the CAA and their initial establishment in Title I Permits, the effectiveness of T1 Conditions derives from Title I of the CAA rather than being linked to Title V of the A. For "changes" to be made to Title I Conditions, they must either cease to be applicable based on obvious circumstances, e.g., the subject emission unit is permanently shut down, or appropriate Title I procedures must be followed to change the conditions.

- Newly Issued Construction Permits:

<i>Permit No.</i>	<i>Date Issued</i>	<i>Subject</i>
0606025	09/20/2006	Gas fired turbine with low NO <sub>x</sub> burners

### **CHAPTER III - SUPPLEMENTAL DISCUSSIONS REGARDING THE PERMIT**

The information provided in this Chapter of the Statement of Basis is being provided to assist interested parties in understanding what additional information may have been relied on to support this draft CAAPP permit.

#### **3.1 Environmental Justice Discussions**

This location has not been identified as a potential concern for Environmental Justice consideration.

#### **3.2 Emission Testing Results**

The source has performed the following emission testing:  
Compliance emission test on the exhaust stack of the natural gas fired turbine

<i>Emission Unit</i>	<i>Date</i>	<i>Pollutant</i>	<i>Results of Run #1</i>	<i>Results of Run #2</i>	<i>Results of Run #3</i>	<i>Results of Run #4</i>
Turbine	01/08/2008	NO <sub>x</sub>	8.39 lb/hr 86% load	13.21 lb/hr 92%load	4.1 lb/hr 96%load	4.29 lb/hr 100%load
		CO	341 lb/hr 86%load	5.03 lb/hr 92%load	0.28 lb/hr 96%load	0.29 lb/hr 100%load
		VOM	-----			0.03 lb/hr 100%load

#### **3.3 Compliance Reports (Annual Certifications, Semiannual Monitoring, NESHP, etc.)**

A review of the source's compliance reports demonstrates the sources ability to comply with all applicable requirements.

#### **3.4 Field Inspection Results**

A review of the source's latest field inspection report dated 2/16/2011 demonstrates the source's ability to comply with all applicable requirements.

#### **3.5 Historical Non-Compliance**

There is no historical non-compliance for this source.

#### **3.6 Source Wide Justifications and Rationale**

<b>Applicable Requirements Summary</b>		
Applicable Requirement	Type	Location
Fugitive Particulate Matter (35 IAC 212.301 and 35 IAC 212.314)	Applicable Standard	See the Permit, Condition 3.1(a)
Episode Action Plan	Applicable Standard	See the Permit, Condition 3.2 (c)

#### **Visible Emissions (i.e., Opacity)** **Particulate Matter Emission**

- ✓ Monitoring as follows (Condition 3.1(a)(ii))
  - o If required, observations for a week for PM emissions.

### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this emission unit because:

- There is a small likelihood of an exceedance.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.

### **Green House Gases (GHG)**

Based on the available data from the IEPA tracking system (ICEMAN), this source is not a major source for GHG. The potential emissions are less than 100,000 tons per year. The applicant has voluntarily submit data on its emissions of GHG in its 2013 AER, reporting actual emissions of 49843 tons of CO<sub>2</sub>, 0.07 tons of N<sub>2</sub>O, and 106 tons of methane.

### **Non-Applicability Discussion**

Complex source-wide non-applicability determinations were not made for this source.

### **Startup/Shutdown/Malfunction-Breakdown Discussion**

The source requested and has been granted Startup, Shutdown, and malfunction-Breakdown exceptions, see Chapter III Section 3.

### **Prompt Reporting Discussion**

Prompt reporting of deviations for source wide emission units has been established as 30 days. See rationale in Chapter III Section 3.9.

### **3.7 Emission Unit Justifications and Rationale**

<b>a. Natural gas fired turbine</b>		
<b>Applicable Requirements Summary</b>		
Applicable Requirement	Type	Location
Opacity Requirement (35 IAC 212.123(a) and (b))	Applicable Standard	See the Permit, Condition 4.1.2(a)
Particulate Matter Requirements (Permit #06060025)	Applicable Limits	See the Permit, Condition 4.1.2(b)
Sulfur Dioxide Requirements (40 CFR 60.4330(a)(2)) and (35 IAC 214.301)	40 CFR 60 Subpart KKKK Standard	See the Permit, Condition 4.1.2(c)(i)
Volatile Organic Material Permit #06060025	Applicable Limits	See Permit, Condition 4.1.2(d)
Carbon Monoxide Permit #06060025	Applicable Limits	See Permit, Condition 4.1.2(e)
Nitrogen Oxide 40 CFR 60.4320 and Permit#06060025	40 CFR 60 Subpart KKKK and Standard	See Permit, Condition 4.1.2(f)

### **Visible Emissions (i.e., Opacity)**

- ✓ Monitoring as follows
  - o Method 9 every year

- ✓ Recordkeeping as follows (Condition 4.1.2(a)(ii)(B)):
  - o Records of each Method 9 measurement
- ✓ Reporting as follows (Condition 4.1.5):
  - o Prompt reporting within 30 days

#### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this emission unit because:

- There is a small likelihood of an exceedance.
- Emissions do not vary significantly under normal operation and/or vary slowly with time.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.

#### **Particulate Matter Emission**

- ✓ Monitoring as follows (Condition 4.1.2(b)(ii))
  - o Specified PM limits turbine must be monitored on a rolling 12 month basis.
- ✓ Recordkeeping as follows (Condition 4.1.2(b)(ii)):
  - o Recordkeeping PM emission of turbine, lbs/hr and tons/yr.
- ✓ Reporting as follows (Condition 4.1.6(a)):
  - o Prompt and timely reporting of deviations within 30 days.

#### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this the turbine because:

- There is a small likelihood of an exceedance.
- Emissions do not vary significantly under normal operation and/or vary slowly with time.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.

#### **Sulfur Emissions**

- ✓ Monitoring as follows (Condition 4.1.2(c))
  - o Specified SO<sub>2</sub> limits for turbine must be monitored on a rolling 12 month basis
- ✓ Recordkeeping as follows:
  - o Recordkeeping of SO<sub>2</sub> emissions from turbine in lb/hr and tons/yr
- ✓ Reporting as follows :
  - o Prompt reporting within 30 days

#### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this turbine because:

- There is a small likelihood of an exceedance.
- Emissions do not vary significantly under normal operation and/or vary slowly with time.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.
- The only fuel used to fire the turbine is natural gas violating the sulfur limit is unlikely.

Pipeline quality natural gas has sulfur content limited to levels that would result in SO<sub>2</sub> emissions less than the limit. Pursuant to 40 CFR 72.2 to be considered pipeline quality natural gas it must contain 0.5 grains or less of total sulfur per 100 standard cubic feet (less than 8.0 ppm) thus resulting in SO<sub>2</sub> emissions less than the 2,000 ppm limit.

#### **Carbon Monoxide Emissions**

- ✓ Monitoring as follows (Condition 4.1.2(d)(ii))
  - o Specified CO limits from turbine must be monitored on rolling 12 months basis.
- ✓ Recordkeeping as follows (Condition 4.1.2(ii)):
  - o Recordkeeping CO emissions of turbine in lbs/hr and tons/yr.
- ✓ Reporting as follows :
  - o Prompt reporting within 30 days

#### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this turbine because:

- There is a small likelihood of an exceedance.
- Emissions do not vary significantly under normal operation and/or vary slowly with time.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.

On January 8, 2008, test procedures were conducted and determined the emission rates of carbon monoxide (CO) of 0.29 lb/hr at 100% load. Pursuant to Construction Permit #06060025, the emissions of VOM are limited to 10.0 lb/hr.

#### **Nitrogen Oxides Emissions**

- ✓ Monitoring as follows (Condition 4.1.2(d)(ii))
  - o Emissions of NO<sub>x</sub> limits from turbine must be monitored on rolling 12 months basis.
- ✓ Recordkeeping as follows (Condition):
  - o Recordkeeping of NO<sub>x</sub> emissions of turbine lbs/hr and tons/yr.
- ✓ Reporting as follows:
  - o Prompt reporting within 30 days

#### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this turbine because:

- There is a small likelihood of an exceedance.
- Emissions do not vary significantly under normal operation and/or vary slowly with time.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.

On January 8, 2008, test procedures were conducted and determined the emission rates of nitrogen oxides (NO<sub>x</sub>) of 4.29 lbs/hr at 100% load. Pursuant to Construction Permit #06060025, the emissions of NO<sub>x</sub> are limited to 20.0 lbs/hr.

#### **Organic Material Emission**

- ✓ Monitoring as follows (Condition 4.1.2(c)(ii))
  - o Specifies emissions of VOM from turbine must be monitored on a rolling 12 months basis.
- ✓ Recordkeeping as follows:
  - o Recordkeeping of VOM from turbine in lbs/hr and tons/yr.
- ✓ Reporting as follows:
  - o Prompt reporting within 30 days

#### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this turbine because:

- The source has a substantial margin of compliance.
- There is a small likelihood of an exceedance.
- Emissions do not vary significantly under normal operation and/or vary slowly with time.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.

On January 8, 2008, test procedures were conducted and determined the emission rates of organic material (VOM) of 0.03 lb/hr at 100% load. Pursuant to Construction Permit #06060025, the emissions of VOM are limited to 1.12 lbs/hr.

#### **HAP Emissions**

- ✓ Monitoring as follows (Condition 4.1.2(f))
  - o HAP emissions from turbine must be monitored on a rolling 12 months basis
- ✓ Recordkeeping as follows:
  - o Recordkeeping of HAP from turbine lbs/hr and tons/yr.
- ✓ Reporting as follows:
  - o Prompt reporting within 30 days

#### **Rationale and Justification for Periodic Monitoring**

Periodic Monitoring is sufficient for this turbine because:

- The source has a substantial margin of compliance.

- There is a small likelihood of an exceedance.
- Emissions do not vary significantly under normal operation and/or vary slowly with time.
- Source has not exhibited a history of non-compliance.
- Monitoring is consistent with other sources in this source category.

### **Non-Applicability Discussion**

Complex non-applicability determinations were not made for this emission unit. All non-applicability discussions can be found in the Draft CAAPP Permit.

### **Prompt Reporting Discussion**

Prompt reporting of deviations has been established as 30 days. See rationale in Chapter III Section 3.9.

### **3.8 Insignificant Activities Discussion**

Insignificant Activity	Number of Unit	Insignificant Activity Category
450KW (4.1 mmBtu/hr) Standby generator	1	35 IAC 201.210(a)(16)

<b><u>Applicable Requirements Summary</u></b>		
Applicable Requirement	Type	Location
Construction Permit #06060025	Applicable Limitation	See the Permit, Condition 6.1(a)(i)

### **3.9 Prompt Reporting Discussion**

Among other terms and conditions, CAAPP Permits contain reporting obligations to assure compliance with applicable requirements. These reporting obligations are generally four-fold. More specifically, each CAAPP Permit sets forth any reporting requirements specified by state or federal law or regulation, requires prompt reports of deviations from applicable requirements, requires reports of deviations from required monitoring and requires a report certifying the status of compliance with terms and conditions of the CAAPP Permit over the calendar year.

The number and frequency of reporting obligations in any CAAPP Permit is source-specific. That is, the reporting obligations are directly related to factors, including the number and type of emission units and applicable requirements, the complexity of the source and the compliance status. This four-fold approach to reporting is common to virtually all CAAPP Permits as described below. Moreover, this is the approach established in the Draft CAAPP Permit for this source.

### **Regulatory Reports**

Many state and federal environmental regulations establish reporting obligations. These obligations vary from rule-to-rule and thus from CAAPP source to CAAPP source and from CAAPP Permit to CAAPP Permit. The variation is found in the report triggering events, reporting period, reporting frequency and reporting content. Regardless, the CAAPP makes clear that all reports established under applicable regulations shall be carried forward into the CAAPP Permit as stated in Section 39.5(7)(b) of the Illinois Environmental



Protection Act. Generally, where sufficiently detailed to meet the exacting standards of the CAAPP, the regulatory reporting requirements are simply restated in the CAAPP Permit. Depending on the regulatory obligations, these regulatory reports may also constitute a deviation report as described below.

The Draft CAAPP Permit for this source would embody all regulatory reporting as promulgated under federal and state regulations under the Clean Air Act and the Illinois Environmental Protection Act. Depending on the frequency of the report, the regulatory report may also satisfy the prompt reporting obligations discussed below. These reports must be certified by a responsible official.

These reports are generally found in the reporting sections for each emission unit group. The various regulatory reporting requirements are summarized in the table at the end of this Reporting Section.

#### **Deviation Reports (Prompt Reporting)**

Section 39.5(7)(f)(ii) of the Illinois Environmental Protection Act mandates that each CAAPP Permit require prompt reporting of deviations from the permit requirements.

Neither the CAAPP nor the federal rules upon which the CAAPP is based and was approved by USEPA define the term "prompt". Rather, 40 CFR Part 70.6(a)(3)(iii)(B) intended that the term have flexibility in application. The USEPA has acknowledged for purposes of administrative efficiency and clarity that the permitting authority (in this case, Illinois EPA) has the discretion to define "prompt" in relation to the degree and type of deviation likely to occur at a particular source. The Illinois EPA follows this approach and defines prompt reporting on a permit-by-permit basis. In instances where the underlying applicable requirement contains "prompt" reporting, the Illinois EPA typically incorporates the pre-established timeframe in the CAAPP permit (e.g. a NESHAP or NSPS deviation report). Where the underlying applicable requirement fails to explicitly set forth the timeframe for reporting deviations, the Illinois EPA generally uses a timeframe of 30 days to define prompt reporting of deviations.

This approach to prompt reporting of deviations as discussed herein is consistent with the requirements of Section 39.5(7)(f)(ii) of the Illinois Environmental Protection Act as well as 40 CFR Part 70 and the CAA. The reporting arrangement is designed so that the source will appropriately notify the Illinois EPA of those events that might warrant attention. The timing for these event-specific notifications is necessary and appropriate as it gives the source enough time to conduct a thorough investigation into the causes of an event, collecting any necessary data, and developing preventive measures, to reduce the likelihood of similar events, all of which must be addressed in the notification for the deviation, while at the same time affording regulatory authority and the public timely and relevant information. The approach also affords the Illinois EPA and USEPA an opportunity to direct investigation and follow-up activities, and to make compliance and enforcement decisions in a timely fashion.

The Draft CAAPP Permit for this source would require prompt reporting as required by the Illinois Environmental Protection Act in the fashion described in this subsection. In addition, pursuant to Section 39.5(7)(f)(i) of the Illinois Environmental Protection Act, this Draft CAAPP Permit would also require the source to provide a summary of all deviations with the Semi-Annual

Monitoring Report. These reports must be certified by a responsible official, and are generally found in the reporting sections for each emission unit group.

### **Semi-Annual Monitoring Reports**

Section 39.5(7)(f)(i) of the Illinois Environmental Protection Act mandates that each CAAPP Permit require a report relative to monitoring obligations as set forth in the permit. Depending upon the monitoring obligation at issue, the semi-annual monitoring report may also constitute a deviation report as previously discussed. This monitoring at issue includes instrumental and non-instrumental emissions monitoring, emissions analyses, and emissions testing established by state or federal laws or regulations or as established in the CAAPP Permit. This monitoring also includes recordkeeping. Each deviation from each monitoring requirement must be identified in the relevant semi-annual report. These reports provide a timely opportunity to assess for compliance patterns of concern. The semi-annual reports shall be submitted regardless of any deviation events. Reporting periods for semi-annual monitoring reports are January 1 through June 30 and July 1 through December 31 of each calendar year. Each semi-annual report is due within 30 days after the close of reporting period. The reports shall be certified by a responsible official. The Draft CAAPP Permit for this source would require such reports at Condition 3.5(b).

### **Annual Compliance Certifications**

Section 39.5(7)(p)(v) of the Illinois Environmental Protection Act mandates that each CAAPP Permit require a source to submit a certification of its compliance status with each term and condition of its CAAPP Permit. The reports afford a broad assessment of a CAAPP sources compliance status. The CAAPP requires that this report be submitted, regardless of compliance status, on an annual basis. Each CAAPP Permit requires this annual certification be submitted by May 1 of the year immediately following the calendar year reporting period. The report shall be certified by a responsible official. The Draft CAAPP Permit for this source would require such a report at Condition 2.6(a).

Prompt reporting of deviations is critical in order to have timely notice of deviations and the opportunity to respond, if necessary. The effectiveness of the permit depends upon, among other important elements, timely and accurate reporting. The Illinois EPA, USEPA, and the public rely on timely and accurate reports submitted by the source to measure compliance and to direct investigation and follow-up activities. Prompt reporting is evidence of the source's good faith in disclosing deviations and describing the steps taken to return to compliance and prevent similar incidents.

Any occurrence that results in an excursion from any emission limitation, operating condition, or work practice standard as specified in this Draft CAAPP Permit is a deviation subject to prompt reporting. Additionally, any failure to comply with any permit term or condition is a deviation of that permit term or condition and must be reported to the Illinois EPA as a permit deviation. The deviation may or may not be a violation of an emission limitation or standard. A permit deviation can exist even though other indicators of compliance suggest that no emissions violation or exceedance has occurred. Reporting permit deviations does not necessarily result in enforcement action. The Illinois EPA has the discretion to take enforcement action for permit deviations that may or may not constitute a deviation from an emission limitation or standard or the like, as necessary and appropriate.

As a result, the Illinois EPA's approach to prompt reporting of deviations as discussed herein is consistent with the requirements of Section 39.5(7)(f)(ii) of the Illinois Environmental Protection Act as well as 40 CFR Part 70 and the CAA. This reporting arrangement is designed so that the source will appropriately notify the Illinois EPA of those events that might warrant individual attention.

### **3.10 Inclusion of a Compliance Schedule**

The identification of non-compliance and/or the issuance of an NOV/VN, and reference to information contained therein, alone is not sufficient to satisfy the demonstration requirement under 505(b)(2) of the CAA requiring the inclusion of an approvable compliance schedule. This alleged non-compliance is simply an early stage in the larger enforcement process of determining whether a violation, in fact, has occurred. This information noted above is therefore too speculative to warrant a compliance schedule without further investigation by appropriate enforcement staff at the State or Federal level. This investigation typically involves additional information gathering sessions and exchanges which is part of the enforcement proceeding and not a part of the permitting process. This stage of the enforcement proceeding is considered a critical step of fact finding under our civil litigation procedures and affords the source the necessary due process. Neither the issuance of an NOV/VN or the identification of alleged non-compliance has the force or effect of the law and therefore is not subject to judicial review at this stage.

If the Illinois EPA were to consider this information as a factor regarding applicability requirements for purposes of CAAPP, other relevant considerations would need to be taken into account such as (1) the quality and source of the information, (2) whether the facts are disputable, (3) the types of defenses, and (4) the nature of any disputed legal ambiguities. These factors may not be readily discernable at this early stage and would need to be considered within the constraints of the CAAPP process. Neither 40 CFR Part 70 or Section 39.5 of the Illinois Environmental Protection Act contemplates this type of judicial review in the context of a Title V permit and does not provide the necessary authorities to proceed with such investigation. As such, Illinois EPA must consider the potential impact that both enforcement and permitting have on one another. Where there is a pending or active enforcement case at the same time as a permitting action, the source and the Illinois EPA could easily find them self-litigating the same matters in two different venues with the risk of different and conflicting results.

Therefore, while nothing in the Illinois Environmental Protection Act would prohibit Illinois EPA from including a compliance schedule in the permit, the question that presents itself is whether the inclusion of a compliance schedule is mandatory when such information is available before the matter has been adjudicated and required actions to achieve compliance have yet to be identified. USEPA has stated, in multiple petition responses regarding this topic of discretionary versus mandatory compliance schedules, which it is entirely appropriate for the permitting authority to allow the enforcement case to take its course and wait to see whether an adjudicated order results at which time, the permit may be reopened to include a compliance schedule at that time.

### **3.11 Start-up/Shutdown/Malfunction Breakdown Discussion**

- **SIP Start-up/Malfunction-Breakdown Authorization Discussion**

The Illinois EPA does not provide for “automatic exemptions” within CAAPP Permits for operation with excess emissions during malfunction/breakdown or startups. The permits and the language regarding such exemptions are consistent with the Illinois SIP and federal guidance on the topic. An explanation of Illinois’ SIP and its permitting practice is provided below.

Illinois’ SIP at 35 IAC 201.149 prohibits continued operation of an emission unit during malfunction or breakdown of the unit or associated air pollution control equipment, or startup of an emission unit or associated air pollution control equipment, if such operation would cause a violation of applicable emission standards or limitations absent express permit authorization (emphasis added). Further provisions pertaining to such permit authorization are set forth in 35 IAC Part 201, Subpart I. These provisions make clear that the process in Illinois for addressing malfunction/breakdown and startup is in two steps. The first step, as set forth at 35 IAC 201.261, consists of seeking authorization by means of an application for permit to prospectively make a claim of malfunction/breakdown or startup. Pursuant to the provisions for malfunction/breakdown, the application shall include an explanation of why continued operation is necessary; the anticipated nature, quantity and duration of emissions; and measures that will be taken to minimize the quantity and duration of emissions. Pursuant to the applicable regulation, for startup, the application shall include a description of the startup procedure, duration, and frequencies of startups, type, and quantity of emissions during startups and efforts to minimize emissions, duration, and frequency. These regulatory requirements are acknowledged by the CAAPP, pursuant to Section 39.5(5)(s) of the Illinois Environmental Protection Act. Absent a request for authorization in an application for a CAAPP Permit that satisfies both the requirements for application content and the standards for granting, and, after Illinois EPA review, an express grant of such authorization in a CAAPP Permit issued by the Illinois EPA, a CAAPP source cannot make a claim of malfunction/breakdown or startup under Illinois regulations.

The second phase of Illinois’ process for operation with excess emissions during malfunction/breakdown or startup, as set forth at 35 IAC 201.262, addresses the showing that must be made in order to make a viable claim of malfunction/breakdown or startup. Pursuant to the regulations for malfunction/breakdown, this showing consists of a demonstration that operation was necessary to prevent injury to persons or severe damage to equipment, or was required to provide essential services. There are two elements to the required showing, “need” and “function”. For startup, it shall consist of a demonstration that all reasonable efforts have been made to minimize emissions from the startup event, to minimize the duration of the event, and to minimize the frequency of such events. To a certain extent, this showing may be evaluated on past practice. However, this showing is also prospective, like the showing for malfunction/breakdown, as it relates to future events, which and whose exact circumstances are not known, and which, in fact, may or may not occur.

The approach taken by Illinois’ regulation can be distinguished from and contrasted with that of the federal NESHAP regulations, under 40 CFR Part 63. These federal regulations address excess emissions during malfunction (and shutdown) or startup without the initial step required by Illinois’ rules. This is because all sources are able to claim exclusion from an otherwise

applicable standard during a malfunction or startup event. The validity of the claims is then subject to scrutiny by USEPA and the state enforcement authority, as to the acceptability of a source's claim that an incident should qualify for an exemption. That is, that the excess emissions could not be readily prevented and were not contrary to good air pollution control practices. In fact, this case-by-case scrutiny is the second step provided for in Illinois' regulations. This "federal approach" is set forth in the planned revised CAAPP Permit for select emission units that are subject to certain NESHAPs. Violations of applicable NESHAP emission limits are governed by the "federal approach". Violations of emissions standards found in state air pollution control regulations at 35 IAC Subtitle B Chapter I Subchapter c are governed by the SIP approach.

For those units for which this source seeks malfunction/breakdown or startup authorization under Illinois' SIP, the draft CAAPP Permit application contains complete Forms 204-CAAPP and 203-CAAPP, respectively entitled Request To Continue To Operate During Malfunction and Breakdown and Request To Operate During Startup of Equipment. These forms seek the specific information required by the relevant state regulation. Again, that information is an explanation of why continued operation is necessary; the anticipated nature, quantity and duration of emissions; and measures that will be taken to minimize the quantity and duration of emissions for malfunctions and breakdowns. It is a description of the startup procedure, duration and frequencies of startups, type and quantity of emissions during startups, and efforts to minimize emissions, duration and frequency for start-up. Accordingly, this source seeks malfunction/breakdown as well as startup authorization in accordance with applicable Illinois regulation. Illinois EPA thoroughly reviewed this information against the SIP. Based on its review, the Draft CAAPP Permit would grant authorization to the facility to make a claim of malfunction/breakdown or startup. That the Draft CAAPP Permit affords such authorization, does not equate to an "automatic exemption". The grant of such initial authorization is fully consistent with long standing practice in Illinois permitting and enforcement. Due to the size and complexity of the source and the inability to simply shutdown equipment or the level of hazards associated with improper start-up or shutdown, the source may experience excess emissions due to events that cannot be readily anticipated or reasonably avoided. However, the facility is also fully aware that it may be held accountable for any excess emissions that occur regardless of any such authorization.

Neither the provisions in the SIP nor the provisions in the CAAPP Permit delineating the elements for a viable claim of malfunction/breakdown or startup translate into any advanced determination on excess emissions. Rather, together the regulations and the CAAPP Permit simply provide a framework whereby a source may have an opportunity to make a claim of malfunction/breakdown or startup, with the viability of such claim subject to specific review against the requisite requirements. Indeed, 35 IAC 201.265 clearly states that violating an applicable state standard even if consistent with any expression of authority regarding a malfunction/breakdown or startup set forth in a permit shall only constitute a prima facie defense to an enforcement action for violation of said regulation. The malfunction/breakdown or startup authorization provided in the Draft CAAPP Permit does not provide shields from state emission standards that may be violated during said events. Rather, the source is subject to the applicable limitations or standards on any malfunction/breakdown or startup authorization included within the permit. As a result, any excess emissions during these events would constitute violations potentially subject to enforcement action.

For any source that receives such authorization, the type of authorization (i.e., malfunction/breakdown or startup), the emission units for which authorization has been received, and the conditions under, and manner in which such authorization may be utilized are clearly set forth in the CAAPP Permit. The origin of these authorizations is 35 IAC 201.149.

- **Federal Start-up/Shutdown/Malfunction-Breakdown Authorization Discussion**

As originally adopted, the General Provisions of the NESHAP, 40 CFR Part 63 Subpart A (40 CFR 63.6(f) and (h)) provided that the limits of the NESHAP generally did not apply during startup, shutdown and malfunction (SSM) events (the "SSM Exemption") unless otherwise provided in a particular subpart for a particular category of source or emissions unit.<sup>3</sup> However, in December 2008, a US Court of Appeals decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008), vacated this SSM Exemption.<sup>4</sup>

On July 22, 2009, Adam Kushner, Director of the Office of Civil Enforcement of the USEPA issued guidance identifying the categories of sources that would no longer be exempt from applicable numerical NESHAP standards during startup, shutdown, and malfunction as a result of the vacatur of the SSM exemption (the SSM Vacatur). This guidance states that the SSM vacatur immediately affects only the NESHAP standards for source categories that both (i) incorporate the SSM Exemption by reference and (ii) contain no other regulatory text that provides an exemption or exception from otherwise applicable limits during startup, shutdown or malfunction events. The NESHAP standards for many source categories contain such separate category-specific exemption language for startup, shutdown and malfunction events. These provisions were not at issue in the *Sierra Club* case and decision, and accordingly those separate provisions would not be affected by the vacatur of the SSM Exemption in 40 CFR 63 Subpart A. The guidance identifies the NESHAP standards for various categories of sources that would be affected by the SSM vacatur and the standards for other categories of sources that would not be affected ("Table 1" and "Table 2", respectively, of the guidance).<sup>5</sup>

### **3.12 Greenhouse Gas Provisions**

On June 3, 2010, USEPA adopted rules for the initial permitting of major sources of emissions of greenhouse gases (GHG). See, 75 FR 31514-31608. Prompted by the earlier adoption of GHG emissions standards for motor vehicles under Title II of the CAA, the USEPA's rules implement a two-phased program for permitting major sources of GHG under Title V permit programs.<sup>6</sup> As Illinois EPA is planning to issue a permit to this source during the second phase of the rules, GHG emissions must be addressed during this CAAPP permitting action.<sup>7</sup> Annual Emission Reports submitted to the Illinois EPA by this source and/or estimated GHG emissions by the Illinois EPA, which detail the source's actual annual emissions of GHG, provide the necessary data to appropriately address emissions of GHG in the Draft CAAPP Permit. The data in these reports clearly show the source is a major source for emissions of GHG.

The new federal rules also require subject Title V sources to comply with any applicable GHG-related requirements that arise from other CAA programs.<sup>8</sup> However, there are currently no emission standards or other regulatory obligations relating to GHG that constitute "applicable requirements" for this source. For this reason, the Draft CAAPP Permit for this source does not contain any substantive requirements for GHG. At the federal level, the only venue that could potentially establish GHG-related requirements at this time is

the PSD program. As of January 2, 2011, sources triggering PSD must evaluate GHG emissions resulting from projects that trigger the major source or major modification rules.<sup>9</sup> This source has neither constructed such a project, nor received a permit authorizing such a project, since January 2, 2011, to the present, and therefore has not triggered any GHG-related requirements under the PSD program.

There are no other GHG-related requirements established under the CAA that are applicable to this source at this time. In particular, the mandatory reporting rule for GHG promulgated by USEPA in 2009 [see generally, 40 CFR Part 98] is not an applicable requirement and therefore would not be included in the Draft CAAPP Permit for this source. There are also no GHG-related requirements under the Illinois Environmental Protection Act or contained within Illinois' SIP that apply to the source at this time. Other state laws or regulations in Illinois relating to GHG, including efforts to reduce emissions of GHG under authority other than the Illinois Environmental Protection Act, do not constitute applicable requirements under the CAAPP.

### **3.13 Incorporation by Reference Discussion**

Based on guidance found in White Paper 2 and past petition responses by the Administrator, it is recognized that Title V permit authorities may, within their discretion, incorporate plans by reference. As recognized in the *White Paper 2*, permit authorities can effectively streamline the contents of a Title V permit, avoiding the inevitable clutter of restated text and preventing unnecessary delays where, as here, permit issuance is subject to a decision deadline.<sup>10</sup> However, it is also recognized that the benefits of incorporation of plans must be carefully balanced by a permit authority with its duty to issue permits in a way that is "clear and meaningful" to the Permittee and the public.<sup>11</sup>

The criteria that are mentioned in USEPA Administrator Petition Responses stress the importance of identifying, *with specificity*, the object of the incorporation.<sup>12</sup> The Illinois EPA agrees that such emphasis is generally consistent with USEPA's pronouncements in previous guidance.

For each condition incorporating a plan, the Illinois EPA is also briefly describing the general manner in which the plan applies to the source. Identifying the nature of the source activity, the regulatory requirements or the nature of the equipment associated with the plan is a recommendation of the *White Paper 2*.<sup>13</sup> The Illinois EPA has stopped short of enumerating the actual contents of a plan, as restating them in the permit would plainly defeat the purpose of incorporating the document by reference and be contrary to USEPA guidance on the subject.<sup>14</sup>

Plans may need to be revised from time to time, as occasionally required by circumstance or by underlying rule or permit requirement. Except where expressly precluded by the relevant rules, this Draft CAAPP Permit allows the Permittee to make future changes to a plan without undergoing formal permit revision procedures. This approach will allow flexibility to make required changes to a plan without separately applying for a revised permit and, similarly, will lessen the impacts that could result for the Illinois EPA if every change to a plan's contents required a permitting transaction.<sup>15</sup> Changes to the incorporated plans during the permit term are automatically incorporated into the Draft CAAPP Permit unless the Illinois EPA expresses a written objection.

The Draft CAAPP Permit incorporates by reference the following plans: Episode Action Plan.

### **3.14 Periodic Monitoring General Discussions**

Pursuant to Section 504(c) of the Clean Air Act, a Title V permit must set forth monitoring requirements, commonly referred to as "Periodic Monitoring," to assure compliance with the terms and conditions of the permit. A general discussion of Periodic Monitoring is provided below. The Periodic Monitoring that is proposed for specific operations and emission units and at this source is discussed in Chapter III of this Statement of Basis. Chapter III provides a narrative discussion of and justification for the elements of Periodic Monitoring that would apply to the different emission units and types of emission units at the facility.

As a general matter, the required content of a CAAPP Permit with respect to such Periodic Monitoring is addressed in Section 39.5(7) of the Illinois Environmental Protection Act.<sup>16</sup> Section 39.5(7)(b) of the Illinois Environmental Protection Act<sup>17</sup> provides that in a CAAPP Permit:

The Agency shall include among such conditions applicable monitoring, reporting, record keeping and compliance certification requirements, as authorized by paragraphs d, e, and f of this subsection, that the Agency deems necessary to assure compliance with the Clean Air Act, the regulations promulgated thereunder, this Act, and applicable Board regulations. When monitoring, reporting, record keeping and compliance certification requirements are specified within the Clean Air Act, regulations promulgated thereunder, this Act, or applicable regulations, such requirements shall be included within the CAAPP Permit.

Section 39.5(7)(d)(ii) of the Illinois Environmental Protection Act further provides that a CAAPP Permit shall:

Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), require Periodic Monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit  
...

Accordingly, the scope of the Periodic Monitoring that must be included in a CAAPP Permit is not restricted to monitoring requirements that were adopted through rulemaking or imposed through permitting. When applicable regulatory emission standards and control requirements or limits and control requirement in relevant Title 1 permits are not accompanied by compliance procedures, it is necessary for Monitoring for these standards, requirements or limits to be established in a CAAPP Permit.<sup>18, 19</sup> Monitoring requirements must also be established when standards and control requirement are accompanied by compliance procedures but those procedures are not adequate to assure compliance with the applicable standards or requirements.<sup>20, 21</sup> For this purpose, the requirements for Periodic Monitoring in a CAAPP Permit may include requirements for emission testing, emissions monitoring, operational monitoring, non-instrumental monitoring, and recordkeeping for each emission unit or group of similar units at a facility, as required by rule or permit, as appropriate or as needed to assure compliance with the applicable substantive requirements. Various combinations of monitoring measures will be appropriate



for different emission units depending on their circumstances, including the substantive emission standards, limitations and control requirements to which they are subject.

What constitutes sufficient Periodic Monitoring for particular emission units, including the timing or frequency associated with such Monitoring requirements, must be determined by the permitting authority based on its knowledge, experience and judgment.<sup>22</sup> For example, as Periodic Monitoring must collect representative data, the timing of Monitoring requirements need not match the averaging time or compliance period of the associated substantive requirements, as set by the relevant regulations and permit provisions. The timing of the various requirements making up the Periodic Monitoring for an emission unit is something that must be considered when those Monitoring requirements are being established. For this purpose, Periodic Monitoring often consists of requirements that apply on a regular basis, such as routine recordkeeping for the operation of control devices or the implementation of the control practices for an emission unit. For certain units, this regular monitoring may entail "continuous" monitoring of emissions, opacity or key operating parameters of a process or its associated control equipment, with direct measurement and automatic recording of the selected parameter(s). As it is infeasible or impractical to require emissions monitoring for most emission units, instrumental monitoring is more commonly conducted for the operating parameters of an emission unit or its associated control equipment. Monitoring for operating parameter(s) serves to confirm proper operation of equipment, consistent with operation to comply with applicable emission standards and limits. In certain cases, an applicable rule may directly specify that a particular level of an operating parameter be maintained, consistent with the manner in which a unit was being operated during emission testing. Periodic Monitoring may also consist of requirements that apply on a periodic basis, such as inspections to verify the proper functioning of an emission unit and its associated controls.

The Periodic Monitoring for an emission unit may also include measures, such as emission testing, that would only be required once or only upon specific request by the Illinois EPA. These requirements would always be accompanied by Monitoring requirements that would apply on a regular basis. When emission testing or other measure is only required upon request by the Illinois EPA, it is included as part of the Periodic Monitoring for an emission unit to facilitate a response by the Illinois EPA to circumstances that were not contemplated when Monitoring was being established, such as the handling of a new material or a new mode of operation. Such Monitoring would also serve to provide further verification of compliance, along with other potentially useful information. As emission testing provides a quantitative determination of compliance, it would also provide a determination of the margin of compliance with the applicable limit(s) and serve to confirm that the Monitoring required for an emission unit on a regular basis is reliable and appropriate. Such testing might also identify specific values of operating parameters of a unit or its associated control equipment that accompany compliance and can be relied upon as part of regular Monitoring.

There are a number of considerations or factors that are or may be relevant when evaluating the need to establish new monitoring requirements as part of the Periodic Monitoring for an emission unit. These factors include: (1) The nature of the emission unit or process and its emissions; (2) The variability in the operation and the emissions of the unit or process over time; (3) The use of add-on air pollution control equipment or other practices to control emissions and comply with the applicable substantive requirement(s); (4) The

nature of that control equipment or those control practices and the potential for variability in their effectiveness; (5) The nature of the applicable substantive requirement(s) for which Periodic Monitoring is needed; (6) The nature of the compliance procedures that specifically accompany the applicable requirements; (7) The type of data that would already be available for the unit; (8) The effort needed to comply with the applicable requirements and the expected margin of compliance; (9) The likelihood of a violation of applicable requirements; (10) The nature of the Periodic Monitoring that may be readily implemented for the emission unit; (11) The extent to which such Periodic Monitoring would directly address the applicable requirements; (12) The nature of Periodic Monitoring commonly required for similar emission units at other facilities and in similar circumstances; (13) The interaction or relationship between the different measures in the Periodic Monitoring for an emission unit; and (14) The feasibility and reasonableness of requiring additional measures in the Periodic Monitoring for an emission unit in light of other relevant considerations.<sup>23</sup>

## **Endnotes**

<sup>1</sup> The federal PSD program, 40 CFR 52.21, applies in Illinois. The Illinois EPA administers PSD permitting for major projects in Illinois pursuant to a delegation agreement with USEPA.

<sup>2</sup> Illinois has a state nonattainment NSR program, pursuant to state rules, Major Stationary Sources Construction and Modification ("MSSCM"), 35 IAC Part 203, which have been approved by USEPA as part of the State Implementation Plan for Illinois.

<sup>3</sup> During startup, shutdown and malfunction, a source was instead required to minimize emissions of subject emission units in a manner consistent with good air pollution control practice. A startup shutdown and malfunction plan must be maintained by a source setting forth how it operate emission units to minimize emissions during events, ideally so that they are not accompanied by any violations of the applicable standards. Finally, the term "malfunction" is also narrowly defined under the NESHAP. Malfunctions only include events that are sudden, infrequent and not reasonably preventable. Events that are caused, even in part, by poor maintenance or careless operation are not malfunctions for purposes of any SSM exemption.

<sup>4</sup> The *Sierra Club* decision has created concern for the sources that are subject to NESHAP standards and have relied upon the SSM Exemption. For some source categories, the technological capability to maintain compliance with numerical NESHAP standards during SSM events may not currently exist. Numerical standards were also adopted without critical consideration necessarily having been given to whether those standards could reasonably and appropriately be met during startup, shutdown or malfunction events. Consequently, the vacatur of the SSM Exemption creates uncertainty and concern about how to apply these NESHAP standards pertaining to such events.

<sup>5</sup> The USEPA guidance contains a caveat. USEPA recognizes that the source category-specific SSM exemption provisions may be challenged separately. As such, the analysis in its guidance could be subject to change. USEPA indicates that it intends to evaluate which source category-specific SSM exemption provisions should be revised. The Illinois EPA is not aware of any such specific challenges that have been made to source category-specific SSM exemption provisions in the NESHAP.

<sup>6</sup> The new rules apply the first phase of permitting to sources already subject to Title V by virtue of their conventional, non-GHG pollutants. As noted above, these sources are expected to address GHG in their permitting applications and to comply with any substantive requirements for GHG that have been established through other CAA programs such as PSD. The second phase of permitting that begins July 1, 2011, essentially applies the same requirements to sources who will become subject to Title V based on their GHG emissions alone (i.e., existing or newly constructed sources with a potential to emit of equal to or greater than 100,000 tons per year of CO<sub>2</sub>e and 100 tons per year of GHG on a mass basis).

<sup>7</sup> USEPA has stated that the first phase of its new rules requires existing Title V sources to address GHG in their Title V applications by citing to any pollutants for which the Title V source is major and to all regulated air

pollutants. See, PSD and Title V Permitting Guidance for Greenhouse Gases, prepared by the Office of Air Quality Planning and Standards, page 51 (November 2010).

<sup>8</sup> See generally, PSD and Title V Permitting Guidance for GHG at pages 53-56.

<sup>9</sup> A major source subject to PSD based on potential emissions of a non-GHG pollutant and potential emissions of GHG equal or greater than 75,000 tons per year of CO<sub>2</sub>e is required to address GHG emissions in evaluating control options and associated monitoring, reporting, etc, for any construction of a new major source or a major modification of an existing major source.

<sup>10</sup> Among other things, USEPA observed that the stream-lining benefits can consist of "reduced cost and administrative complexity, and continued compliance flexibility...". *White Paper 2*, page 41.

<sup>11</sup> See, *In the Matter of Tesoro Refining and Marketing*, Petition No. IX-2004-6, Order Denying in Part and Granting in Part Petition for Objection to Permit, at page 8 (March 15, 2005); see also, *White Paper 2* at page 39 ("reference must be detailed enough that the manner in which any referenced materials applies to a facility is clear and is not reasonably subject to misinterpretation").

<sup>12</sup> The Order provides that permit authorities must ensure the following: "(1) referenced documents be specifically identified; (2) descriptive information such as the title or number of the document and the date of the document be included so that there is no ambiguity as to which version of the document is being referenced; and (3) citations, cross references, and incorporations by reference are detailed enough that the manner in which any referenced material applies to a facility is clear and is not reasonably subject to misinterpretation." See, *Petition Response* at page 43, citing *White Paper 2* at page 37.

<sup>13</sup> See, *White Paper 2* at page 39.

<sup>14</sup> Nothing in USEPA guidance, including the *White Paper 2* or previous orders responding to public petitions, supports the notion that permit authorities incorporating a document by reference must also restate contents of a given plan in the body of the Title V permit. Such an interpretation contradicts USEPA recognition that permit authorities need not restate or recite an incorporated document so long as the document is sufficiently described. *White Paper 2* at page 39; see also, *In the matter of Consolidated Edison Co. of New York, Inc., 74th St. Station*, Petition No. II-2001-02, Order Granting in Part and Denying in Part Petition for Objection to Permit at page 16 (February 19, 2003).

<sup>15</sup> This approach is consistent with USEPA guidance, which has previously embraced a similar approach to certain SSM plans. See, *Letter and Enclosures*, dated May 20, 1999, from John Seitz, Director of Office of Air Quality Planning and Standards, to Robert Hodanbosi and Charles Lagges, STAPPA/ALAPCO, pages 9-10 of Enclosure B.

<sup>16</sup> The provisions of the Act for Periodic Monitoring in CAAPP permits reflect parallel requirements in the federal guidelines for State Operating Permit Programs, 40 CFR 70.6(a)(3)(i)(A), (a)(3)(i)(B), and (c)(1).

<sup>17</sup> Section 39.5(7)(p)(i) of the Act also provides that a CAAPP permit shall contain "Compliance certification, testing, monitoring, reporting and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit."

<sup>18</sup> The classic example of regulatory standards for which Periodic Monitoring requirements must be established in a CAAPP permit are state emission standards that pre-date the 1990 Clean Air Act Amendments that were adopted without any associated compliance procedures. Periodic Monitoring must also be established in a CAAPP permit when standards and limits are accompanied by compliance procedures but those procedures are determined to be inadequate to assure compliance with the applicable standards or limits.

<sup>19</sup> Another example of emission standards for which requirements must be established as part of Periodic Monitoring is certain NSPS standards that require initial performance testing but do not require periodic testing or other measures to address compliance with the applicable limits on a continuing basis.

<sup>20</sup> The need to establish Monitoring requirements as part of Periodic Monitoring when existing compliance procedures are determined to be inadequate, as well as when they are absent, was confirmed by the federal appeals court in *Sierra Club v. Environmental Protection Agency*, 536 F.3d 673, 383 U.S. App. D.C. 109.

<sup>21</sup> The need to establish Monitoring requirements as part of Periodic Monitoring is also confirmed in USEPA's Petition Response. USEPA explains that "...if there is periodic monitoring in the applicable requirements, but that monitoring is not sufficient to assure compliance with permit terms and conditions, permitting authorities must supplement monitoring to assure such compliance." Petition Response, page 6.

<sup>22</sup> The test for the adequacy of "Periodic Monitoring" is a context-specific determination, particularly whether the provisions in a Title V permit reasonably address compliance with relevant substantive permit conditions. 40 CFR 70.6(c)(1); see also 40 CFR 70.6(a)(3)(i)(B); see also, *In the Matter of CITGO Refinery and Chemicals Company L.P.*, Petition VI-2007-01 (May 28, 2009); see also, *In the Matter of Waste Management of LA. L.L.C. Woodside Sanitary Landfill & Recycling Center, Walker, Livingston Parish, Louisiana*, Petition VI-2009-01 (May 27, 2010); see also, *In the Matter of Wisconsin Public Service Corporation's JP Pulliam Power Plant*, Petition V-2009-01 (June 28, 2010).

<sup>23</sup> A number of these factors are specifically listed by USEPA in its Petition Response. USEPA also observes that the specific factors that it identifies in its Petition Response with respect to Periodic Monitoring provide "...the permitting authority with a starting point for its analysis of the adequacy of the monitoring; the permitting authority also may consider other site-specific factors." Petition Response, page 7.